

STATE OF COLORADO

John W. Hickenlooper, Governor
Christopher E. Urbina, MD, MPH
Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

February 27, 2013

Mr. Steve Salka
105 Sawyer Drive
Durango, Colorado 81301

Certified Mail Number: 7007 0220 0001 0162 1962


RE: Compliance Order on Consent, Number: MC-130227-1

Dear Mr. Salka:

Enclosed for the City of Durango's records you will find your copy, with original signatures, of the recently executed Compliance Order on Consent. Please remember that this agreement is subject to a thirty-day public comment period (paragraph 42). Upon initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Order and "Attachment A" were changed in order to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact me at (303) 692-2356 or by electronic mail at joseph.campbell@state.co.us.

Sincerely,


Joe Campbell
Clean Water Compliance & Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

cc: Greg Brand, San Juan Basin Health Department (gregbrand@sjbhd.org)
Natasha Davis, EPA Region VIII (davis.natasha@epa.gov)
Heather Drissel, Engineering Section, CDPHE
Janet Kieler, Permits Section, CDPHE
Barry Cress, DOLA
Michael Beck, Grants and Loans Unit, CDPHE
Tania Watson, Compliance Assurance, CDPHE



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
DIVISION OF ADMINISTRATION
WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

NUMBER: MC-130227-1

IN THE MATTER OF: CITY OF DURANGO
CDPS PERMIT NUMBER CO-0024082
LA PLATA COUNTY, COLORADO

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of the City of Durango, Colorado ("Durango"). The Division and Durango may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are:
 - a. To resolve all alleged violations of the Act, the permit regulations (5 CCR 1002-61), and Durango's Colorado Discharge Permit System permit number CO-0024082, based on Durango's sanitary sewer overflows ("SSOs"), listed in paragraph 12 below, that have occurred between November 3, 2008 and September 18, 2011; and
 - b. To establish compliance requirements and criteria to prevent or minimize future SSOs from Durango's sanitary sewer collection system.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Durango, Durango's wastewater treatment facility and associated collection system, and Durango's compliance with the Act and its implementing permit regulations and its Colorado Discharge Permit System permit.
3. At all times relevant to the violations cited herein, Durango was a municipality as defined by §31-1-101(6), C.R.S.

4. Durango is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
5. Durango owns and operates a wastewater treatment facility, known as the Durango Wastewater Treatment Plant, which is located at or near 105 South Camino del Rio in Durango, La Plata County (the "Treatment Facility").
6. The Treatment Facility is authorized to receive and treat up to 3 million gallons per day of domestic sewage and industrial wastewater generated from Durango. Durango's wastewater collection system covers 18 square miles and is comprised of approximately 67 miles of pipeline, including 18 lift stations (the "Collection System").

Unauthorized Discharge and Land Application

7. Pursuant to §25-8-501(1), C.R.S., no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.
8. Durango is the subject of a Colorado Discharge Permit System ("CDPS") permit; permit number CO-0024082 (the "Permit"). The Permit authorizes Durango to discharge treated wastewater from the Treatment Facility through one outfall (outfall 001A) to the Animas River in accordance with effluent limitations, monitoring requirements, and other conditions set forth in the Permit.
9. Pursuant to 5 CCR 1002-61, §61.14(1)(a), Durango is required to obtain a permit for all land application discharges unless:
 - a. The discharge is exempted under 5 CCR 1002-61, §61.14(1)(b);
 - b. The discharge is subject to regulation by one of the implementing agencies described in 61.14(2); or
 - c. The owner of a land application system can demonstrate that: (i) the design and operation of the system will result in complete evapotranspiration of the effluent; (ii) there is adequate storage provided for the effluent during periods of inclement weather or where the ground has been frozen unless the provisions of (i) above can be met during the entire year; and; (iii) any augmentation plan or substitute supply plan for the land application site does not provide a credit for return of the effluent to ground water.
10. Part II, section A(6) of the Permit states, "Any discharge to the waters of the State from a point source other than specifically authorized herein is prohibited."
11. Part I, section A(4) of the Permit provides in part: "The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee as necessary to achieve compliance with the conditions of this permit. This provision requires the operation of back-up or auxiliary facilities or similar systems when installed by the Permittee only when necessary to achieve compliance with the conditions of the permit."

12. Division records establish that Durango has reported the following thirteen (13) SSOs from its Collection System to the Division from November 3, 2008 through January 9, 2012:

Date of Event	Cause of Release/Discharge	Quantity Release/Discharged (Gallons)	Receiving Water
11-03-08	Grease blockage in sewer line	150	Building Backup/Land Application
04-14-09	Tree root blockage in sewer line	100	Private Residence
05-19-09	Uncapped sewer line	40	Private Residence
05-03-10	Plugged sewer line	450	Building Backup/Land Application
10-08-10	Plugged sewer line	23,100	Animas River
01-17-11	Plugged sewer line created a backup through a manhole	50	Land Application
02-01-11	Plugged sewer line created a backup through a manhole	600	Animas River
07-15-11	Failed inverted siphon	300,000	Animas River
07-27-11	Plugged sewer line created a backup through a manhole	10	Land Application
07-30-11	Plugged sewer line due to tree roots	100	Land Application
08-02-11	Power to a lift station was inadvertently cut-off causing a backup	100	Land Application
9-18-11	Glitch in software at a lift station caused a failure of the pump causing a backup through a manhole	1,000	Animas River
1-09-12	Clogged bar screen in a lift station causing a backup	400	Animas River

13. Wastewater contains, among other substances, biochemical oxygen demand (“BOD”), total suspended solids (“TSS”), and fecal coliform bacteria, which are “pollutants” within the meaning of section 25-8-102(15), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(76).
14. The Animas River is “state waters” as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(101).
15. Durango’s Treatment System, Collection System, and its ancillary equipment, as they relate to each discharge event identified above in paragraph 12, are a “point source” as defined by §25-8-103(14), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(75).

16. Each of Durango's wastewater discharges identified above in paragraph 12 that reached state waters constitutes a "Discharge of Pollutants" as defined by section 25-8-103(3), C.R.S.
17. Division records establish that Durango's CDPS permit does not authorize the wastewater discharges identified above in paragraph 12 and Durango does not have any other permits authorizing the wastewater discharges identified above in paragraph 12 into state waters.
18. Each of Durango's surface water discharges identified in paragraph 12 above constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of section 25-8-501(1), C.R.S. and in violation of CDPS permit number CO-0024082 Part I, section A(4).
19. Durango's release of wastewater from its Collection System to the land, as identified in paragraph 12 above, constitutes "Land Application" as defined by 5 CCR 1002-61, §61.2(48).
20. Durango's land application discharges, as identified in paragraph 12 above, do not meet any of the exemption criteria of 5 CCR 1002-61, §61.14(1)(a), and therefore are subject to the land application discharge permit requirements.
21. Division records establish that Durango does not have any permits authorizing the land application of wastewater from its Collection System.
22. Durango's discharge of wastewater from its Collection System to the land, as identified in paragraph 12 above, constitutes unauthorized land application in violation of 5 CCR 1002-61, §61.14(1)(a) and violations of CDPS permit number CO-0031232, Part I, §A(4).

Failure to Notify of Discharge/Release

23. Pursuant to §25-8-601(2), C.R.S., any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state contrary to the provisions of this article, as soon as he (she) has knowledge thereof, shall notify the division of such discharge.
24. Part I, §D(3)(b)(ii) of the Permit states "The following instances of noncompliance shall be reported orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. A written report, containing the information requested in Part I.D.4.b(i), above, shall be mailed to the Division within five (5) working days of the time the permittee becomes aware of the circumstances.
 - a. Any instance of noncompliance which may endanger human health or the environment, regardless of the cause for the incident.
 - b. Any unanticipated bypass, or any upset or spill, which causes any permit limitation to be exceeded.
 - c. Any suspected discharge of toxic pollutants or hazardous substances, which are listed in Part III of this permit, in excess of a daily maximum limit or where there is no limit for the toxic pollutant or hazardous substance in question."

25. On July 15, 2011 Durango experienced a significant sewage overflow from its Collection System. The resulting sewage overflow may have endangered human health and may have caused pollution of the Animas River.
26. Division records establish that Durango did not orally notify the Division of the July 15, 2011 event within twenty-four (24) hours of the time that Durango became aware of the circumstances.
27. Durango's failure to timely notify the Division regarding the July 15, 2011 sewage overflow event to the Animas River constitutes violations of §25-8-601(2), C.R.S. and CDPS permit number CO-0024082 Part I, §D(3)(b)(ii).

ORDER AND AGREEMENT

28. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the alleged violations cited herein, the Division orders Durango to comply with all provisions of this Consent Order, including all requirements set forth below.
29. Durango agrees to the terms and conditions of this Consent Order. Durango agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Durango also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Durango against the Division:
 - a. The issuance of this Consent Order;
 - b. The factual and legal determinations made by the Division herein; and
 - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
30. Notwithstanding the above, Durango does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Durango pursuant to this Consent Order shall not constitute evidence of fault and liability by Durango with respect to the conditions of the Treatment Facility and Collection System.

Compliance Requirements

31. In order to minimize the potential for future sanitary sewer overflows from the Collection System, Durango shall undertake the following activities:
 - a. Within thirty (30) calendar days of the effective date of this Consent Order, Durango shall conduct a comprehensive evaluation of the Collection System. The evaluation shall consider, at a minimum; the age, condition, and hydraulic capacity of the Collection System and an assessment of inflow and infiltration within the Collection System. In addition, the evaluation shall include considerations for future growth areas that will have a potential impact to the Collection System's hydraulic capacity.

- b. Within sixty (60) calendar days of the effective date of this Consent Order, Durango shall submit to the Division the results of the evaluation of Durango's Collection System, as referenced in Paragraph 31a. Any corrective measures and associated implementation schedules identified as a result of the evaluation shall become a condition of this Consent Order and Durango shall implement the corrective measures/time schedules as submitted unless notified by the Division that alternate measures or time schedules are appropriate. If the Division imposes an alternate plan, it shall also become a condition of this Consent Order. **The Division acknowledges receipt of item 31(b) on September 14, 2012.**
- c. Within thirty (30) calendar days of the effective date of this Consent Order, Durango shall develop or, if applicable, revise its current Site Operating Procedures (SOP). The SOP shall include, at a minimum; Collection System drawings, methods for evaluating the Collection System's effectiveness at carrying peak flows, an evaluation of a pretreatment program for commercial dischargers (e.g. fats, oils, grease, fuels), the periodic evaluation, maintenance and testing of the alarm systems, and the installation of high and low level alarms at the lift stations.
- d. Within sixty (60) calendar days of the effective date of this Consent Order, Durango shall submit to the Division a copy of its up-to-date SOP for the Collection System, as referenced in Paragraph 31c. Within thirty (30) calendar days of receiving Division comments on submitted documents, Durango shall consider and revise the submitted document(s) to properly address the Division's comments or Durango shall respond in writing outlining why revisions are unwarranted. **The Division acknowledges receipt of item 31(d) on September 14, 2012.**
- e. Within sixty (60) calendar days of the effective date of this Consent Order, Durango shall develop a Preventative Maintenance Program (PMP). The PMP shall include, at a minimum; methods for identifying and plans for managing maintenance issues and problem areas within the Collection System, a Collection System cleaning program, a plan for the inspection and maintenance of Collection System lines, a plan for the inspection and maintenance of manholes, and a list and plan for the inspection and maintenance of lift stations and force mains.
- f. Within ninety (90) calendar days of the effective date of this Consent Order, Durango shall submit to the Division a copy of its PMP for the System, as referenced in Paragraph 31e. Within thirty (30) calendar days of receiving Division comments on submitted documents, Durango shall consider and revise the submitted document(s) to properly address the Division's comments or Durango shall respond in writing outlining why revisions are unwarranted. **The Division acknowledges receipt of item 31(f) on September 14, 2012.**
- g. Within sixty (60) calendar days of the effective date of this Consent Order, Durango shall develop spill/release prevention and response policies/procedures and develop a sanitary sewer overflow and spill response plan. The plan shall take into account, and be consistent with, the spill reporting requirements of the Permit and the Division's Guidance for Reporting Spills. The plan shall consider, at a minimum; response initiation triggers, notification and signage requirements (regulatory and downstream), response equipment availability, response equipment staging locations, personnel training requirements, interim mitigation measures (including field monitoring), and final remedial actions. In addition, the plan shall clarify, through scenarios, how proper spill reporting procedures will be performed.

- h. Within ninety (90) calendar days of the effective date of this Consent Order, Durango shall submit to the Division the implementation plan, as referenced in Paragraph 31g, on the evaluation of its spill/release prevention and response policies/procedures. Within thirty (30) calendar days of receiving Division comments on submitted documents, Durango shall consider and revise the submitted document(s) to properly address the Division's comments or Durango shall respond in writing outlining why revisions are unwarranted. **The Division acknowledges receipt of item 31(i) on September 14, 2012.**
- i. Within sixty (60) calendar days of the effective date of this Consent Order, Durango shall conduct a vulnerability study of the Collection System. The areas identified in the vulnerability study shall have emergency response plans and schedules associated with them to reduce the vulnerabilities in those identified areas.
- j. Within ninety (90) calendar days of the effective date of this Consent Order, Durango shall submit to the Division a copy of the vulnerability study, as referenced in Paragraph 31i. Within thirty (30) calendar days of receiving Division comments on submitted documents, Durango shall consider and revise the submitted document(s) to properly address the Division's comments or Durango shall respond in writing outlining why revisions are unwarranted. **The Division acknowledges receipt of item 31(j) on September 14, 2012.**

CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS

- 32. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, the Division has determined that a penalty of Eighty Thousand Eight Hundred Sixty-Six Dollars (\$80,866.00) is appropriate for the violations cited herein.
- 33. Through the application of the criteria set forth in the Colorado Department of Public Health and Environment's Final Agency-Wide Policy on Settling Administrative and/or Civil Penalties Against Eligible Governmental Entities, the Division has determined that Durango is an eligible governmental entity and that the entire penalty can be mitigated through the completion of the following Supplemental Environmental Project ("SEP") identified by Durango, which is valued at One Hundred Twenty-Two Thousand Five Hundred Fifty Dollars (\$122,550.00).
- 34. Durango shall undertake the following SEP, which the Parties agree are intended to secure significant environmental or public health protection and improvements.
- 35. Durango shall spend no less than One Hundred Twenty One Thousand Two Hundred Ninety Nine Dollars (\$121,299.00) on the installation of three permanent backup generators at three lift stations, as further described in Attachment A. If Durango completes the generator upgrades specified in Attachment A and does not expend the full One Hundred Twenty One Thousand Two Hundred Ninety Nine Dollars (\$121,299.00), Durango may propose an alternate SEP for Division review and approval that accounts for the remaining balance. The alternate SEP proposal shall be submitted to the Division by July 1, 2013.

36. Durango shall not deduct the expenses associated with the implementation of the above-described SEP for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.
37. Durango hereby certifies that, as of the date of this Consent Order, it is not under any existing legal obligation to perform or develop the SEP. Durango further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEP. In the event that Durango has, or will receive credit under any other legal obligation for the SEP, Durango shall pay Eighty Thousand Eight Hundred Sixty-Six Dollars (\$80,866.00) to the Division as a civil penalty within thirty (30) calendar days of receipt of a demand for payment by the Division. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Joe Campbell
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CAS-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

38. The SEP must be completed to the satisfaction of the Division, within six (6) months of the effective date of this Consent Order, and must be operated for the useful life of the SEP. In the event that Durango fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEP, Durango shall be liable for penalties as follows:
- a. Payment of a penalty in the amount of Eighty Thousand Eight Hundred Sixty-Six Dollars (\$80,866.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of the SEP.
 - b. Durango shall pay this penalty within thirty (30) calendar days of receipt of written demand by the Division.
39. The SEP Completion Report shall be submitted to the Division within seven (7) months of the effective date of this Consent Order. The SEP Completion Reports shall contain the following information:
- a. A detailed description of the SEP as implemented;
 - b. A description of any operating problems encountered and the solutions thereto;
 - c. Itemized costs, documented by copies of purchase orders and receipts or canceled checks or other forms of proof of payment;
 - d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and
 - e. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).

40. Failure to submit the SEP Completion Report with the required information, or any periodic report, shall be deemed a violation of this Consent Order.

Durango shall include the following language in any written public statement making reference to the SEPs: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment for alleged violations of the Colorado Water Quality Control Act."

SCOPE AND EFFECT OF CONSENT ORDER

41. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations cited herein.
42. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Durango each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
43. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Durango, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
44. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order.
45. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.
46. Notwithstanding paragraph 30 above, the violations described in this Consent Order will constitute part of Durango's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against Durango. Durango agrees not to challenge the use of the cited violations for any such purpose.
47. This Consent Order does not relieve Durango from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

48. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of violations cited herein. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
49. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
50. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
51. Upon the effective date of this Consent Order, Durango releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.
52. Durango shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of Durango, or those acting for or on behalf of Durango, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Durango shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Durango in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

SITE ACCESS

53. The Division shall be permitted to oversee any and all work being performed under this Consent Order. The Division shall be permitted access to the Treatment Facility property at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining Durango's compliance with the Act, the Regulations, and this Consent Order. The Division shall be permitted to inspect work sites, operating and field logs, contracts, purchasing/shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview Durango personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the Treatment Facility and Collection System.

FORCE MAJEURE

54. Durango shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of Durango, and which cannot be overcome by due diligence.

55. Within seventy-two (72) hours of the time that Durango knows or has reason to know of the occurrence of any event which Durango has reason to believe may prevent Durango from timely compliance with any requirement under this Consent Order, Durango shall provide verbal notification to the Division. Within seven (7) calendar days of the time that Durango knows or has reason to know of the occurrence of such event, Durango shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.
56. The burden of proving that any delay was caused by a force majeure shall at all times rest with Durango. If the Division agrees that a force majeure has occurred, the Division will so notify Durango. The Division will also approve or disapprove of Durango's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of Durango's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to Durango. Within fifteen (15) calendar days of receipt of the explanation, Durango may file an objection.
57. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, Durango shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

DISPUTE RESOLUTION

58. If the Division determines that that a violation of this Consent Order has occurred, that a force majeure has not occurred; that the actions taken by Durango to mitigate the delay caused by a force majeure are inadequate; that Durango's Notice of Completion should be rejected pursuant to paragraph 64 the Division shall provide a written explanation of its determination to Durango. Within fifteen (15) calendar days of receipt of the Division's determination, Durango shall:
- a. Submit a notice of acceptance of the determination; or
 - b. Submit a notice of dispute of the determination.
- If Durango fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.
59. If the Division imposes additional, modified or alternate measures pursuant to paragraphs 31(b), 31(d), 31(f), 31(h), or 31(j) within fifteen (15) calendar days of receipt of the Division's notice of such measures, plans, programs, SOPs or time schedules, Durango shall:
- a. Submit a notice of acceptance of the additional, modified or alternate measures and begin implementation of such;
 - b. Submit a notice of dispute of the additional, modified or alternate measures.

If Durango fails to do any of the above within the specified time, Durango shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action, including an assessment of penalties.

60. If Durango files any notice of dispute pursuant to paragraph 64 the notice shall specify the particular matters in the Division's determination that Durango seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by Durango. The Division and Durango shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this thirty (30) calendar day period, the Division shall confirm or modify its decision within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S.

NOTICES

61. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CAS-B2
Attention: Joe Campbell
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.2356
E-mail: joseph.campbell@state.co.us

For City of Durango:

City of Durango
Attention: Steve Salka
105 Sawyer Drive
Durango, Colorado 81301
Telephone: 970-375-4809
Email: SalkaSM@ci.durango.co.us

OBLIGATIONS UNAFFECTED BY BANKRUPTCY

62. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by Durango of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. Durango agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for Durango to achieve and maintain compliance with State law.

MODIFICATIONS

63. This Consent Order may be modified only upon mutual written agreement of the Parties.

COMPLETION OF REQUIRED ACTIONS

64. Durango shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject Durango's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects Durango's Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. Durango shall, within fifteen (15) calendar days of receipt of the Division's rejection, either:
- a. Submit a notice of acceptance of the determination; or
 - b. Submit a notice of dispute.

If Durango fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

NOTICE OF EFFECTIVE DATE

65. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon notice from the Division following closure of the public comment period referenced in paragraph 42.

BINDING EFFECT AND AUTHORIZATION TO SIGN

66. This Consent Order is binding upon Durango and its elected officials, employees, agents, representatives, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. Durango agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR DURANGO:


Steven M. Salka, Utilities Director

Date: 2-19-2013

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:


Steven H. Gunderson, Director
WATER QUALITY CONTROL DIVISION

Date: 2/27/13

ATTACHMENT A

SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP) PROPOSAL/AGREEMENT FORM

The entity, identified below, submits the following SEP application to the Colorado Department of Public Health and Environment (the department) for consideration.

Enforcement Action Information	City of Durango Case No.: 130227-1
Project Manager	Steve Salka City of Durango 105 Sawyer Drive Durango CO 81303 970-375-4809 salkasm@ci.durango.co.us
CDPHE Contact Person	Joe Campbell, Compliance Assurance/Enforcement Program, WQCD Rachel Wilson-Roussel, SEP Coordinator, Sustainability Program, 303-692-2976
Geographical Area to Benefit Most Directly From Project	This project will protect the Waters of the State from the City of Durango downstream to New Mexico.
Project Name	Lift Station Generators
Project Type	First Party
SEP Category	Pollution Prevention, Pollution Reduction, Environmental Improvement and Public Health
Project Summary	The City of Durango has eighteen (18) lift stations that are not equipped with an on-site generator. Through this SEP, the city will install on-site generators at three (3) of the lift stations to prevent sewage spills during catastrophic power outages.

ATTACHMENT A

<p>Project Description</p>	<p>Background:</p> <p>The City of Durango has eighteen (18) lift stations that are not equipped with an on-site generator in the case of a catastrophic power outage in the three locations chosen we have taken into consideration the location of the lift station, accessibility and flow rates less than 30 minutes or less. In the last two years these three lift stations have had a total of 12 power outages ranging from 31 minutes to 6 hours and 17 minutes. Having permanent generators at these three locations increase our response time, decrease the chance of an SSO and will allow us take our portable generators to the other 8 lift stations requiring power. Eleven (11) of the sewer lift stations are located along the Animas River and in the event of a power outage sewage spills resulting in "Pollution of State Waters" occurs more quickly than a lift station that is located a couple of miles from the Animas River.</p> <p>Project Objective:</p> <p>To install on-site generators at three of the City's lift stations that are located along the Animas River in order to eliminate sewage spills when a lightning strike or during a catastrophic power failure. Specifically, the generators will be installed at the following locations:</p> <ol style="list-style-type: none"> 1. Lightner Creek 2. Doubletree 3. Bodo 2 <p>Project Work Plan:</p> <p>Appropriate \$125,000</p> <p>Advertise for bid</p> <p>Purchase generators</p> <p>Hire contractors to excavate site, pour concrete and install on-site generator</p> <p>Standardize Fencing</p> <p>Staff training</p> <p>Technical Information:</p> <p>See attached specification, drawings and maps showing the location of the lift stations.</p>
<p>Expected Environmental and/or Public Health Benefits</p>	<p>On-site generators at the two (2) lift station that are located along the Animas River (Lightner Creek and Bodo 2) will prevent an average of 300 to 500 gallons of raw sewage spilling into the "Waters of the State" per incident. The Animas River is used for recreation by boaters and fishermen. The Animas River also provides water for domestic and irrigation downstream from Durango Colorado to Farmington, New Mexico. The third on-site generator will be installed at the Doubletree Hotel lift station to help prevent an average of 50 gallons of raw sewage spill into the hotel's swimming pool. When a sewage spill occurs at the Doubletree Hotel swimming pool, they are required to close the swimming pool for 72 hour after the incident.</p>

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Project Budget	Category	Description	Cost
	Personnel - Salaries, Wages.		\$ 0
	Materials and Supplies	Conduit, wires, breakers, power panels and surge suppression.	\$ 6,000
	Equipment	3 Generators	\$71,550
	Contractors/ Subcontractors	Concrete Pad & Site Grading	\$22,500
		Electrician	\$ 9,000
	Other Direct Costs	Fencing	\$ 4,500
		Gravel	\$ 9,000
	Total:		\$122,550
Budget Discussion	The cost for one (1) on site generator installed is approximately \$41,000 per unit including installation and setup. Cost of Generator was based on current cost from a distributor. The Concrete Pad and Site Grading is a City engineer estimate, based on terrain conditions of most lift station sites. Phone quotes were obtained for electrical work. The fencing cost was based on a recent purchase.		
Project Schedule	Proposed Implementation Start Date:	Within 30 days of the effective date of the Consent Order	
	Purchase Generators Due Date:	Within 80 days of the effective date of the Consent Order	
	Projected Completion Date:	Within 160 days of the effective date of the Consent Order	
	SEP Completion Report Due:	[Due no more than 30 days after project completion]	
Reporting	<u>SEP Completion Report</u> A full expense accounting, including proof of all payments, will be provided in the SEP Completion Report. The SEP Completion report will contain at a minimum: <ul style="list-style-type: none">• A detailed description of the project as implemented;• A description of any operating problems encountered and the solutions thereto;• Itemized costs, documented by copies of purchase orders and receipts or canceled checks;• Certification and demonstration that the SEP has been fully implemented pursuant to the provisions of the Consent Order; and• A description of the environmental and public health benefits resulting from implementation of the SEP along with quantification of the outcomes and benefits. Additional information may include: <ul style="list-style-type: none">• Examples of materials developed or produced as part of the SEP; and• Photographs documenting the project.		

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Other Relevant Information	N/A
Has the applicant entered into any prior commitments to fund this project, voluntary or otherwise? If yes, please explain.	No